IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

CRP.No. 1882 of 2000(G)

(Against order in E.P.300/99 in OS.389/1984 of
II ADDL.SUB COURT,THRISSUR)

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REVN. PETITIONER:

RURAL CURIES PVT. LTD.
TRICHUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS:

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1. P.SUDHAKARAN, S/O PANANGATTUPARAYIL
CHATHUKUTTY NAIR, NENMARA VILLAGE
CHITTUR TALUK

2. VIJAUAGOPALAN
S/O MANEERAMKANDATHVEETTIL
PANANGATTE MADAHAVAN NAIR
- DO -

3. PRABHAKARANUNNY KARTHA,
S/0 KODAKARA THEKKE BHAVANATHIL
DHAKSHAYANI NESSIAR
THIRUVAZHIYAT VILLAGE
AND DESOM, CHITTUR TALUK

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN,J

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C.R.P.No.1882 OF 2000

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Dated this the 22nd day of March, 2007

ORDER

This revision is preferred against the order in E.P.No.300/1999 in O.S.No.389/1984 of the Subordinate Judges Court, Thrissur. The said E.P was filed to transfer the decree for an execution of the decree passed in the above said suit. Originally, there was an order to transmit the decree for execution. Subsequently, at the instance of the judgment debtor, the order was reviewed and on finding that the entire decree amount was paid disallowed the prayer to transmit the decree and therefore dismissed the execution petition. It is against that decision dismissing the E.P., present revision is preferred.

2. The learned counsel for the decree holder/revision petitioner very strongly contend before me that the court has not followed the procedure under order 21 of the C.P.C and the statement that the entire money has been paid towards the decree debt is incorrect and therefore the order requires interference at the hands of this court. A perusal of the order in the review application would reveal that the court has proceeded on the basis that during the

pendency of the proceedings before the court, amounts had been paid by the judgment debtors and receipts had been produced by the lawyer appearing for the decree holder and so if everything is taken into consideration it will show the satisfaction of the decree and so the E.P is not liable to be transmitted. The learned counsel for the decree holder challenges those findings. If really at the time of effecting an order of transfer the entire decree amounts is paid then there is no point in transmitting the decree or in other words the question that has to be considered is whether any amount is outstanding toward the decree debt. At the time of passing the order in the execution application the documents are not referred to and there is challenge against the documents and therefore, it is only just and equitable to direct the Execution Court to reconsider the contention of the decree holder as well as that of the judgment debtor and arrive at a decision regarding the point whether any amount is outstanding on the date of proposed transmission of the decree. For said purpose the decree holder as well as the judgment debtor are permitted to adduce both documentary and oral evidence in support of that contention. After considering the same the Execution Court is directed to pass necessary orders in the light of order 21 of C.P.C. Therefore, the order under challenge is set aside and E.P. is restored to file and the

Execution Court is directed to consider the matter afresh in the light of the observations made in the order.

The C.R.P. is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs